

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM GHNÓTHAÍ AN AONTAIS EORPAIGH

### JOINT COMMITTEE ON EUROPEAN UNION AFFAIRS

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*Dé Céadaoin, 7 Deireadh Fómhair 2020*

*Wednesday, 7 October 2020*

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Tháinig an Comhchoiste le chéile ag 9 a.m.

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The Joint Committee met at 9 a.m.

Comhaltaí a bhí i láthair / Members present:

| Teachtaí Dála / Deputies | Seanadóirí / Senators |
|--------------------------|-----------------------|
| John Brady,              | Lisa Chambers,        |
| Dara Calleary,           | Regina Doherty,       |
| Francis Noel Duffy,      | Sharon Keogan,        |
| Marian Harkin,           | Vincent P. Martin,    |
| Seán Haughey,            | Michael McDowell.     |
| Brendan Howlin,          |                       |
| Ruairí Ó Murchú,         |                       |
| Neale Richmond.          |                       |

Teachta / Deputy Joe McHugh sa Chathaoir / in the Chair.

## **Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020: Discussion**

**Chairman:** Ar son an choiste, cuirim fáilte roimh an Aire, Teachta Coveney, agus roimh a chuid oifigeach go dtí an cruinniú inniu. Táimid ag dúil go mór leis. Mar atá a fhios againn, táimid ag pointe tábhachtach maidir leis an mBreatimeacht agus an comhrá atá de dhíth thar na laethanta agus na seachtainí atá romhainn.

Before we begin, members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I call on the Minister to make his opening statement. He is welcome.

**Minister for Foreign Affairs (Deputy Simon Coveney):** It is a pleasure to be back in a committee room with plenty of people in it, all socially distanced, and to have an opportunity to discuss something that I speak about every day. This is a good opportunity to get some feedback on what we are doing. The primary purpose of this meeting is to let the committee know what we are planning to do in the context of the new omnibus legislation, but it is also an opportunity to deal with as many questions and comments as I can on the broader Brexit process in terms of where the negotiations are, where they are likely to go and how we are planning for all outcomes in preparing a budget and many other contingencies to try to protect the country and everyone in it from the changes that are coming on 1 January. Trade deal or no trade deal, the changes will be substantial and we need to be ready for them. I will make a short opening statement, after which I hope we will move on to the questions that members wish me to address.

I congratulate the Chairman on his appointment. I also congratulate the committee members. I look forward to working with them as we prepare for the end of the transition period and the substantial and permanent changes that will arise in the EU-UK relationship in less than 90 days' time. I appreciate the opportunity to attend this morning.

I have been asked to keep my opening remarks brief. Before turning to the readiness legislation, however, I would like to say that Ireland remains actively engaged in the ongoing negotiations and the implementation of the withdrawal agreement. There will be another specialised committee meeting to discuss the implementation of the protocol relating to Ireland and Northern Ireland on Friday morning next. We will contribute directly to it, as we have done all along. I speak regularly with Mr. Michel Barnier and Vice President Šefcovic, who has become an increasingly important person in these negotiations, given that, alongside Mr. Michael Gove, he co-chairs the joint committee that has responsibility for implementing the withdrawal agreement. Mr. Barnier and Mr. Šefcovic are well versed in Irish priorities and know that Ireland fully supports their work.

Ireland wants the closest possible future relationship between the EU and the UK. However, we must be prepared, and plan for, a more limited outcome. Since the withdrawal agreement was agreed, we have worked to refine and recalibrate our readiness measures for the end of the transition period. This requires us to consider the immediate challenges and the long-term permanent changes to current arrangements.

Government preparedness is well advanced. We published our latest readiness action plan on 9 September. The plan supports and promotes the necessary preparations that government, business and citizens must make for the substantial and enduring changes that will arise in less

than 90 days. We know that, regardless of the outcome of the EU-UK negotiations, the way in which we trade with Great Britain will change substantially and permanently. Businesses will face checks and controls that many have never had to deal with before. Preparations are also ongoing in key areas such as transport, energy, data exchanges and police and judicial co-operation.

To address a number of these challenges, primary legislation is again required. I believe an omnibus Bill is the most effective way to address this broad range of issues. To this end, the Government published the scheme of the withdrawal of the United Kingdom from the European Union (consequential provisions) Bill 2020 on 9 September. Members will recall the Brexit omnibus Act, passed in March 2019. While there is considerable overlap, a key difference between the 2019 Act and 2020 Bill is that the 2019 Act provided contingency measures to address a no-deal cliff-edge scenario, which in the end did not materialise. The 2020 version will deal with the range of complex immediate and permanent changes that arise at the end of the transition period. It seeks to protect citizens and consumers, facilitate the sound functioning of key sectors, and ensure our businesses are not disadvantaged. It will also support aspects of the common travel area and North-South co-operation.

The Bill consists of 21 Parts under the remit of 11 Ministers: the Tánaiste, myself and the Ministers responsible for health, environment, higher education, finance, transport, social protection, justice, children, and housing. As in 2019, I am the lead Minister for this complex piece of legislation responsible for co-ordinating its overall progress. In addition, I am specifically responsible for Part 1 which covers preliminary and general matters.

Good progress is being made between Departments and the Office of Parliamentary Legal Advisers on completing the draft Bill, which will be considered by Cabinet shortly. This is a pre-legislative scrutiny stage to explain why we are doing it, what we plan to address and the timelines around that. I expect the Bill will come before the Oireachtas in the coming weeks.

The range of Ministers involved highlights quite starkly the effect Brexit will have on our economy. In order to provide certainty for our businesses and citizens, I look forward to working with this committee on ensuring its swift progress through the Houses. Essentially, we have modelled the approach on what we did the last time, which required individual Ministers to provide the detail and to answer questions on their sections of the overall omnibus Bill in their areas of responsibility. In the key areas of this legislation it has been agreed between the chairs of the committees that as part of this pre-legislative scrutiny stage, which is not a formal pre-legislative scrutiny, the individual chairmen would invite individual Ministers into their committees over the next ten or so days if the committees had particular issues or questions they wanted answered around this legislation. Everybody is working and co-operating together to try to do this in a timely manner so we can have the legislation into the Houses as soon as is reasonable, when the Government has passed the heads of the Bill. I will be available to take any questions committee members might have. As the legislation moves through we will bring Ministers into the Dáil and the Seanad to deal with the sections they are responsible for. It is modelled on what we did the last time. It will probably take a little bit longer this time because we have a little bit longer. When we did the omnibus Bill in 2019 it moved very quickly through the Houses. We need to get this done in a comprehensive way but also in a timely way so we can give certainty that elements of this legislation provides, whether it is for students, for cross-Border healthcare, for cross-Border bus services, for people being able to carry social welfare entitlements between Britain and Ireland, or for reinforcing the common travel area. There are also many financial provisions, including for exporters and importers. This legisla-

tion will be required, for example, to manage VAT payments and being able to roll them up into two payments every two months rather than having to do it on every consignment. There is a whole series of areas linked to different Departments and Ministers. Some of it is technical and legal and some will provide reassurance to certain communities, be they living here, in Northern Ireland or in the UK. Some of it requires the co-operation of the UK Government in agreeing to update memorandums of understanding in areas of healthcare provision, backed up by base legislation such as produced in this omnibus Bill.

I can go through all 21 Parts of the Bill if the Chairman wants me to or I can give a general assessment of where the negotiations are. I am happy to do that also. I am in the Chairman's hands with regard to the direction he wants to go with the questioning.

**Chairman:** Yes. I think we will have enough questions here to keep the information flowing. I propose that we take three members at a time. Three members have indicated. Deputies Ó Murchú and Richmond, and Senator Chambers. I will take members in that order. I ask members to keep their questions, as many as they want, sharp and concise because we want to get as much information as possible. I thank the Minister and I call Deputy Ó Murchú.

**Deputy Ruairí Ó Murchú:** Perhaps we could get an update on the negotiations so that we all know the difficulties and what we are facing, or at least part of it. It moves somewhere between a bad situation and an absolute nightmare situation.

I have two questions. On the readiness action plan, consistently and constantly, from governmental level and every other level, businesses are being asked to look through their supply chains and to make sure they are logistically checked off. We have the constant difficulty that a very small percentage of businesses actually look into doing this. I imagine that at this point the percentage is better but it is still a difficulty.

On the 2019 Act, the Minister spoke of overlap and the contingency for a cliff-edge scenario. This Bill does not necessarily have all of that. Will the Minister explain the difference, particularly when we have the difficulty around the UK's Internal Market Bill and the possibility of facing into a whole nightmare scenario?

**Senator Lisa Chambers:** I thank the Minister. We have been here before with another deadline but this one feels a little bit different. It appears as though we are approaching the end of the initial start of Brexit.

With regard to relations with the UK, how is the Minister finding things at the minute? There is no doubt there has been an impact with the EU initiating a formal process against the UK around the Internal Market Bill. Given that negotiations are going on in tandem there must be some impact because of that. It is a concern that the UK is not willing to move on that. The UK's action presents a very direct and real threat to Irish citizens and to the island. It is regrettable. Ireland has been a very good neighbour to date and very friendly towards the UK throughout the process. There is no doubt that we will continue to have a good working relationship, I hope, into the future. I am gobsmacked at what the UK has done in a wilful and intentional breach of international law. It has to have had an impact on our working relationship with it.

I will now turn to our messaging to the wider public. Much of the current advertising is that Brexit has already happened and the transition is ending. Many people do not really fully grasp what that might mean. It is probably the same in the UK in that the UK has left but nothing has changed. People are feeling that this has not been too bad because they were in a doomsday

scenario last year. Things have moved on a little bit so perhaps there could be more targeted messaging around what the end of the transition period actually means for citizens, trade, agriculture and tourism, and what the very direct impacts will be.

Will the Minister outline for the committee the conversations he is currently having at EU level on direct and targeted supports for the most affected sectors in Ireland? From my perspective in the west of Ireland, aside from some key industries such as pharmaceuticals, our biggest employers by far are tourism and agriculture. It is a real concern for the west and north-west regions. We will need to see very targeted supports for those sectors come January.

**Deputy Neale Richmond:** Ahead of the meeting on Friday with the joint implementation committee will the Minister be able to flesh out, without giving the game away, what are the sorts of concerns and sticking points beyond the Internal Market Bill? I was under the impression that the meetings between Michael Gove and the Commissioner Mr. Šefovi, had been going relatively well, up to a point, albeit slowly. Where does the next phase need to come in order to make sure the protocol is properly implemented? Obviously, it is an all-weather protocol, regardless of what happens in the parallel trade talks. I am quite concerned about the imposition of artificial deadlines on those trade talks from certain actors. Michel Barnier has come back to member states and there has been ongoing discussion about that. What is the Minister's take on what exactly can be achieved in those trade talks in the very narrow timeline?

On the preparedness, I agree with Senator Chambers's comments about the discussion with European Union colleagues and any accessing of the EU recovery fund. I will not ask the Minister to go through all 21 parts of the Bill, but I will ask about cross-border policing, which the Minister referred to. It was remarked upon by the Minister for Justice, Deputy McEntee, at the justice committee yesterday. Crucially, the report before the House of Commons security and intelligence committee earlier this week outlines the continuing threat of dissident republican terrorists in Northern Ireland. The PSNI, working with An Garda Síochána and State agencies, had quite a bit of success in arresting and sentencing nine members of the New IRA over the summer months, effectively their army council. The warnings in the report before the Westminster committee, and the warnings from the Minister, Deputy McEntee, were quite stark and worrying about the impact of a no-deal Brexit, as well as what is going on anyway with co-ordination of activities between the New IRA, the Continuity IRA and other actors. How can we manage that, regardless of what happens in a narrow deal? A lot of people refer solely to trade negotiations but it covers so much more. How can An Garda Síochána and the agencies of the State work closer and better with their counterparts in Northern Ireland and across the UK and the EU? What measures may need to be taken within any legislation coming before the Houses shortly?

**Deputy Simon Coveney:** There are a lot of questions there and I will try to deal with them. First, on the update in the negotiations, I will give my assessment on where we are. There are two different negotiations, or conversations, happening in parallel but linked to each other. The first is the future relationship negotiation and is led, from our point of view, by Michel Barnier and his task force and on the British side by David Frost and his team. It is pretty clear at this stage that the best-case scenario is to get a very basic trade deal that avoids tariffs and quotas, but this would be a significant achievement from an Irish perspective. There are two major obstacles to getting agreement on that. There are a whole lot of other things that will require temporary solutions if there is not time to put a permanent solution in place in a future relationship agreement. When we signed off this time last year on a withdrawal agreement, and in parallel a political declaration, the ambition for both sides was to have a very comprehensive partner-

ship agreement that involved multiple aspects for agreement around aviation, haulage, judicial co-operation, police co-operation, as well as on trade on a level playing field. It is important to say this because the British Government has moved away from its commitments in the political declaration in many areas.

There are 11 different areas in the future relationship negotiation that are all moving forward in parallel with each other. It is quite clear that in many of those areas we are not going to get a permanent and comprehensive agreement on a future relationship. So, the focus at this stage is on getting a core agreement on trade and what is required to do that, and then to put in place contingency plans in a number of other areas that may not be permanent, but will at least give us certainty in the medium term while we put in place further solutions next year.

If we do not have a trade deal at the end of the transition period then we do have a significant consequence because the default arrangement will be that the UK and the EU will have to trade on the basis of WTO rules and conditions, which involve tariffs and may involve quotas in certain products. Really the focus is on that.

To get a basic trade deal there are two big obstacles from the EU's perspective. One is around the level playing field provisions. It is no harm to remind people, for the record, what the UK did actually sign up to in the political declaration on the level playing field. That term almost seems to be a toxic term now in Westminster. It is a bit like the backstop: it is something that cannot be accepted. The political declaration contained a whole section entitled "level playing field for open and fair competition". It said: "Given the Union and the United Kingdom's geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitments to ensure a level playing field." It goes on to outline all the areas that will need to be agreed in that space. The UK has gone from supporting that wording, which the UK signed off on with the EU, to now saying: "We can do nothing on a level playing field and you will just have to trust us. Britain will decide on its own standards, its own state-aid rules and if we have disputes in the future then let us figure out how we will deal with that." That is very problematic from an EU perspective. Michel Barnier has been very consistent on this. He will not move this process into a more intensive phase, which many would describe as a tunnel, to try to close out the remaining issues, unless he gets a very clear signal from the UK that they are willing to show some flexibility and some realism around the need for fair and open competition between these two big economies. Mr. Barnier is right. The EU is very concerned that if this does not happen, in the future we will have disputes without a governance model to deal effectively with those disputes, and the potential is there for a future British Government to decide to deregulate its own market to create competitive advantage and to use state-aid in a targeted way to create advantage for British industry in certain areas while selling into a very large EU Single Market without any tariffs or quotas, and having derived competitive advantage in their own cost base in Britain to do that. The EU and its Single Market simply cannot take that risk. This is why it is a very serious issue and why there needs to be an understanding on the UK side that this is not a sovereignty grab from the EU, it is quite the opposite. The EU has been very clear that it respects British sovereignty and the United Kingdom outside the EU.

If there is to be a preferential trading arrangement that avoids tariffs and quotas then there has to be an understanding and a governance model to deal with disputes in the future that is independent and trustworthy, and that can act in a timely manner to resolve disputes if and when they occur. That is not an unreasonable ask and is certainly not an overreach from the EU negotiating team. That is important. There is going to be a need for clear understanding as to

how that fair competition will work, and a governance model to deal with disputes in the future so they can be settled quickly.

The second barrier to getting a trade deal is fishing. The committee members will hear a lot about fishing in the weeks ahead, especially the members from Donegal, west Cork and places such as Howth, Wexford and Connemara where there are big fishing ports and big fishing interests. It was agreed as part of that political declaration that a fisheries agreement would happen along with the trade agreement. In fact, it was agreed that fishing would be agreed first. The idea was that we would get fishing done by midsummer to be able then to focus on finalising a future relationship agreement in the early autumn. That clearly has not happened and not only that, the position on fishing has hardened on both sides, if anything. There is a wide gap between what the UK Government is promising on fishing at the end of the transition period and the EU's mandate to negotiate on behalf of fishing interests. I do not believe that the EU will finalise a future relationship agreement on trade without an agreement on fishing. These are real problems. I will talk about the implementation of the protocol in a moment and while some issues are resolvable, the negotiations are going to have to find a way of dealing with the fishing, level playing field and governance issues if there is to be a trade deal in the next month or so. A range of other issues are linked to this, including data for example, and many others that are important for Ireland from the points of view of haulage, use of the land bridge and the aviation industry. I suspect we will see short-term contingency arrangements in many of those areas if we can get a trade deal that avoids tariff and quotas. The two big obstacles are the ones I have outlined.

The second issue that is being negotiated in parallel is about the Ireland and Northern Ireland protocol. It is not a negotiation on the policy or agreement around the protocol but is about the implementation of what has been agreed in the protocol in the withdrawal treaty, based in international law. As I say, there will be another specialised committee that will focus on the detail on Friday.

There are three outstanding issues, which the UK Government claims justify its internal market Bill. I do not think there is any justification for the Bill, which is essentially a negotiating tactic designed to tell the EU to give the UK what it wants on the implementation of the protocol or the UK is going to legislate for it anyway. That is no basis for negotiation. It has damaged trust and relationships in this negotiation and the tactic has significantly backfired on the British Government from a reputational perspective, not only within the Union but also further afield. We would be foolish to focus too much of our time on commentary around the internal market Bill. We need instead to focus the limited time that is available to try to focus on resolving the outstanding issues. Those issues have solutions.

There are three issues that the British Government has a particular problem with on the implementation of the protocol. The first relates to summary export declarations. This is an EU interpretation of the protocol to the effect that businesses in Northern Ireland should be required to have an export summary declaration on goods that they export to Great Britain. The British Government does not regard that as unfettered market access between Northern Ireland and Great Britain and believes that businesses should not be asked to go through the formal process of export summary declarations. The two sides have had quite fruitful discussions on this issue to try to find a middle ground position that allows us to understand what goods are moving between Northern Ireland and Great Britain while accommodating the British concerns within the context of full implementation of the protocol. A solution can be found if both sides approach it with an open mind, which I think they are doing.

The second issue relates to state aid, which is more complicated. The British Government fully accepts that Northern Ireland needs to mirror EU state aid rules. If that does not happen, we are back into Border issues and unfair competition on the island of Ireland. This gets difficult because the state aid provisions in the protocol are clear that they apply to all of the UK in the context of deriving a competitive advantage in Northern Ireland. What I mean by that is that there could be a parent company in Great Britain that has a subsidiary in Northern Ireland, that is, a company that has a footprint in both Great Britain and Northern Ireland. If, in the absence of a trade deal, a future British Government were to give significant state aid to the parent company, beyond what would be consistent with EU state aid rules, does the company derive a competitive advantage, by extension, in Northern Ireland? If so, how do we deal with it? There is real disagreement as to whether the wording on state aid in the Ireland and Northern Ireland protocol stretches into limitations on what a British Government could do in Great Britain. The wording is very clear and the EU's interpretation is spot on but the British Government has pushed back strongly against it. The internal market Bill is a means of the British Government stating that if it cannot get reasonable agreement with the EU on this matter during negotiations, it will legislate to give a British Government Minister the power to determine the issue which, of course, is a complete breach of the spirit and letter of the law in the protocol.

The third issue is what is called the "goods at risk" issue. This relates solely to the application of tariffs on goods coming from Great Britain into Northern Ireland. The protocol effectively creates in Northern Ireland a *de facto* extension of the EU Single Market for goods. By doing that, we prevent the need at any point in the future for border infrastructure, which is a good solution for an all-island economy. The consequence of that solution is that there needs to be some checks on goods coming into Northern Ireland from Great Britain because, of course, those goods could find their way into the Single Market if there is no border, barrier or checking system on the island. In the absence of a trade deal, goods coming into Northern Ireland from Great Britain should have tariffs applied to them on the basis that they may find their way into the Single Market through Northern Ireland, moving south across the Border with no checks? The EU has to be sure that, from a tariff perspective, there is not an unguarded back door for goods to come into the Single Market tariff free because that would create all sorts of perverse incentives in investment, trade, economic activity and so on. The protocol is quite clear on this. It effectively assumes that all goods coming into Northern Ireland from Great Britain could end up in the EU Single Market and, therefore, should have tariffs applied. The British Government has argued that in implementing that we must make allowance for goods that we know are going to stay in Northern Ireland and, therefore, in the UK single market, although operating to the EU customs code, and tariffs should not apply to certain goods. That list of goods is now called the "goods at risk" list. These are goods that are at risk of entering the Single Market and other goods will not be on that list. Trying to get agreement on that, and who makes the final decision if we cannot agree, is the issue. The British Government has said that, in its upcoming finance Bill, it will essentially pass legislation to give a British Minister the power to determine the goods at risk. That would be a complete breach of the protocol and international law. We have given a strong signal to the British Government, and I will say it again here, that if the finance Bill is introduced with that provision in it, many in the EU will see it as an indication that the British Government simply does not want a deal. It would be the second Bill designed to deliberately break the withdrawal agreement protocol on Ireland and Northern Ireland. However, there is no finance Bill yet so we have time and space, I hope, to deal with these issues. I hope I am not going into too much detail and that this is helpful for members. When the negotiations unfold in the coming days and weeks these will be the key issues.

The reason I wanted to outline those three issues as well as the two that are holding up a trade

agreement is that they are somewhat interlinked. If we get a trade deal, two of the three issues linked to the implementation of the protocol effectively disappear. If we get a trade deal, there will be an agreement on how the UK Government approaches state aid in Great Britain and on dispute resolution mechanisms that can deal with future disputes about that issue. Therefore, state aid in Great Britain relating to Northern Ireland and the Northern Ireland protocol is no longer an issue. Likewise, if there is even a thin basic trade deal that avoids tariffs and quotas, the goods at risk issue becomes quite irrelevant as well. If there are no tariffs, one does not have to worry about goods at risk to which tariffs should or should not apply.

If we were to get a trade deal, having solved the issues of fishing and the level playing field, the two most contentious issues in the implementation of the protocol in Northern Ireland are effectively no longer issues. The first issue, as I said previously, in terms of the requirement on businesses to have export summary declarations on goods travelling from Northern Ireland into Great Britain is, in my opinion, resolvable through negotiation. They have not agreed on a middle ground position yet, but there is a good discussion on that in which both sides are trying to address genuinely held concerns on both sides.

This is very doable. The Northern Ireland protocol and the three outstanding issues that have been publicly raised and put up in lights by the British Government can be resolved if there is a trade deal. If there is no trade deal, they will have to be resolved anyway. The British Government is under a legal obligation to implement the Northern Ireland and Irish protocol in full. There is an international treaty that requires it to do that. As Deputy Richmond said, this is an all-weather protocol and withdrawal agreement. It is not contingent on a trade deal, and sometimes that point is lost in the commentary. From an Irish perspective, we have protections in international law that will prevent border infrastructure on this island re-emerging linked to Brexit. That is the reason the EU has given a signal that it is going to initiate legal proceedings, to make sure that the British Government is held to its obligations under international law in this space.

Some people living in Border counties have asked me, in quite emotive language, if they are facing the Border question all over again because of the British Government's threat not to implement the withdrawal agreement in full. My answer to that question is an emphatic, "No, we are not". There are areas of dispute regarding the implementation of the protocol, but not to the extent that it threatens as a consequence the question of whether Ireland has to either impose a border or find itself having to face checks between the Republic of Ireland and the rest of the EU Single Market. We need to take as much heat out of this debate as we can. I do not believe we need to go back into this very emotive area. We have a protocol in international law. The British Government is saying it wants to implement that protocol in full. There is a dispute over some elements of the implementation, on which the British Government has behaved quite recklessly in terms of introducing the Internal Market Bill in domestic legislation, but, in my view, the outstanding issues can be resolved, and will be.

That is the negotiation. I will come back to the contingency planning if members wish, in terms of customs arrangements and so forth, but I will give the members some reassurance on customs. In the last number of weeks, the Revenue Commissioners have written to 90,000 businesses and have followed that up with about 16,000 telephone calls. Part of that contact has been to give a type of Brexit checklist for the companies concerned. We now estimate - I am open to correction on this but I believe I am right - that, in terms of value, some 96.4% of the companies that are involved in the business of exports to the UK have now registered in respect of their customs number and are preparing for the new reality. Some 94.5% or so of the

companies involved in imports have also got their economic operator registration and identification, EORI, numbers and are planning for that new reality in customs. There are many other companies that do not trade very often with the UK, but do so at certain times in the year. They will have to register their EORI numbers as they need to, but the bulk of the businesses involved in the trade between Britain and Ireland are gearing up to do what they need to do.

We are also getting increased buy-in into the customs training programmes we have funded. There is also grant aid available for companies that either want to train people internally to understand how they can manage customs declarations or to take on a customs agent. There are grants of €9,000 for companies that wish to do that. There is much activity there. I know it is not all about customs. There are other elements that companies have to deal with, but customs gives a good indication of the level of preparedness now. It is in a reasonably good space, but there will still be a great deal on the radio and in newspapers from the Government with regard to making sure people understand what they must do between now and the end of the year.

To respond to Senator Chambers, we have been here previously in these negotiations. We have effectively marched Ireland up the mountain on three occasions when there was the potential for a no-deal Brexit. Thankfully, it did not happen, but there is no extra time this time. This is it. Nobody is even talking in back rooms, confidentially and off the record, about extensions beyond the end of this year. It is not an issue. It is now in law and has been agreed between both sides that at the end of the transition period a new reality takes effect. The only question is whether we will be ready for it and whether we can limit the impact and the damage of the trade friction that is going to happen by having a basic trade deal in place that ensures tariffs and quotas are not part of that friction. That is the issue before us now.

I dealt with international law and legal action. There is some complacency, and Covid has made that even more complicated. It is very difficult to get messages out through a Covid fog, all the debates that take place about Covid and everything that flows from it in terms of economic damage, different levels of restrictions and so forth. Despite the fact we are spending significant resources on getting messages out, we must focus in the next few weeks on having a greater impact in terms of not only getting businesses ready but also getting consumers ready. For example, if people buy goods online from the UK, as a large number of people do and particularly during Covid, the consumer protections that we all take for granted - Deputy Harkin will know all this from being in the European Parliament - and that are in the law and protected by EU directives and so forth are gone. It will be a very different trading environment. Maybe I can talk in the next round of questioning around targeted supports and the EU recovery fund in terms of areas such as agrifood and tourism.

Deputy Richmond raised the outstanding issues and the specialised committee. The focus of the joint committee, which is the implementation of the withdrawal agreement, and then onto the specialised committee, has been effectively implementing what has already been agreed. It is not only the three outstanding issues that I outlined. There is also a range of other issues that the British Government accepts need to be done and on which there is no dispute over implementation but the EU wants to see progress on, for example, physical infrastructure in ports in Northern Ireland. I am not aware that one can see any difference yet. I am aware that it is now moving ahead but, let us be honest, it has been left terribly late. Look at what we have done in Dublin, Rosslare and Dublin Airport. For instance, we spent over €30 million in Dublin Port. We have spent millions of euro in Rosslare. The systems will be ready by the end of the year. I see a little bit of coverage today on something I said around Dublin Port. There will be some ongoing work in Dublin Port beyond the end of the December but Dublin Port will be ready on

1 January for what it needs to do in terms of extra parking facilities, storage facilities, cold-storage facilities, stabling for live animals and inspection bays. It is a huge operation. I would encourage members, if they get a chance, to go and see it if they are interested in trade and Brexit. The OPW, Dublin Port, the Revenue Commissioners and the Department of Agriculture, Food and the Marine have all done a really good job there. When I see how much time and effort, and resources, we have put into our own infrastructure provision, one has to ask if the ports in Northern Ireland will be ready by the end of the year. I hope they will be but I suspect some of it will be temporary infrastructure at the end of the year while they finalise arrangements beyond 1 January. That is really a matter for implementation. That, as well as some of the other issues, will be quite a focus of the specialised committee.

On judicial co-operation, one of the elements, Part 16 of the legislation, will deal with extradition arrangements between the UK and Ireland. Under European arrest warrants, etc., this would have been a non-issue previously. I am sure Senator McDowell will understand the legalities of this better than I do. Part 16 is intended to apply the provisions of the European Convention on Extradition 1957 of the Council of Europe to extradition arrangements between Ireland and the UK when the provisions of the European arrest warrant no longer apply. This is a byproduct of Brexit that many people have not even thought about but for which we have to legislate.

I would say that the relationship between the PSNI and An Garda Síochána - I cannot say for certain because I have not been around forever but it is my understanding - is a closer relationship than it has ever been in terms of sharing of information and joint operations on the Border. It has been very effective. We have seen many arrests over the summer because of that co-operation and we will continue to see that. That is all good news and I can assure the committee it will not change with Brexit. In fact, I will visit Belfast tomorrow to meet the Secretary of State and we will discuss many of these issues.

There were some long answers. I will be much more concise with my future answers but I think that gives the committee a good sense of where we are.

**Chairman:** That is great. I understand the need for the preamble before answering the questions. I have another batch of members offering - Deputies Haughey and Howlin, and Senator McDowell. I ask those who do not have microphones who want to speak to indicate and they can organise a swap between themselves and their respective colleagues, if that is okay.

I was interested in hearing the Minister's line that he has not been around forever. I think God used that line one time as well.

**Deputy Simon Coveney:** I am certainly not in that category.

*(Interruptions)*

**Chairman:** I call Deputy Haughey.

**Deputy Seán Haughey:** We have been here previously with omnibus legislation to do with Brexit. I agree with the approach the Tánaiste put forward and the role for the line Ministers. These are difficult, complex, technical, legal issues and we are not all experts on the various provisions of this proposed Bill. The approach we took with the omnibus legislation is the right one and it is a good idea that we are following the same approach.

The civil servants should be thanked for the enormous amount of work they are doing on

these very technical issues. Of course, they get forgotten about. We are grateful to them for dealing with these issues and for bringing forward the legislation and flagging the various issues.

I was interested in what the Minister had to say on the implementation of the Ireland-Northern Ireland protocol. It is important that that would be implemented, with or without a trade deal. It is important to avoid a hard border on the island of Ireland and to protect the Good Friday Agreement. Implicit in this Bill, and explicit, is the area of North-South co-operation. A number of issues arise in this Bill in that context.

While the Minister is here, I will expand a little to the implementation of the provisions of the Good Friday Agreement. The Taoiseach spoke in the Dáil last week about the shared island unit and the role he saw for that unit in the Department of the Taoiseach. I took from what the Taoiseach said that one of the main ambitions of that shared island unit is to implement the provisions of the Good Friday Agreement. Could the Minister give us his take on the shared island unit and the importance of implementing the provisions of the Good Friday Agreement in the Brexit context? As I say, it is a matter for the Taoiseach, but I would be interested in the Minister's take on that unit, where it is at and what it should do in the future.

**Deputy Brendan Howlin:** I agree with the approach as well. The omnibus Bill worked well the first time we did it although I thought it was a complex way of doing it. Bringing individual Ministers into the Dáil to deal with their own sections is good, as is dealing with the individual sections at committee. We had a meeting of the Joint Committee on Justice yesterday and we went in detail into the extradition issues, etc. That is the way to do it.

In terms of legislative change, there is not a significant amount that is directly the Minister, Deputy Coveney's, although he is the steward of the overall package. For that reason, I warmly welcome the detailed overview the Minister has given us. It is extremely helpful to those of us who are following Brexit in some detail to have the current temperature taken.

With that in mind, I will ask a few direct questions. First, in terms of the post-January situation, all the opportunities we have had as a nation for the past 40 years to have close meetings and bilateral associations with British Ministers evaporate. We do not have a formal structure where environment Ministers meet every month, where health Ministers meet regularly, etc. I am interested to know whether there is any parallel process of bilateral agreements between Ireland and the UK. Deputy Richmond touched on, for example, the policing area. These are areas that would be unique to the relationship between Ireland and the UK. I refer, for example, to data sharing. Are we advanced in relation to that? My fear always was that the cliff edge would come and it would be a sour, fractious cliff edge that would make that sort of bilateral arrangement more difficult. We need to have a great deal of advanced work done on that. I would be interested in hearing the Minister's take on that.

I heard clearly what the Minister said about not poking old wounds or reissuing fears. I am still fearful that all the hopes the Minister has set out in terms of addressing and solving the issues on the Northern Ireland Protocol will not be successful. What he has presented to us basically is that it does not matter because the all-weather legal framework is there and cannot be knocked over. The problem is that Britain has already introduced legislation to do precisely that, and it is also threatening further legislation to knock it over. In those circumstances, if there is no implementation of the legal certainty we believed we had in terms of goods entering Northern Ireland from Great Britain, how do we protect the internal market? If this is going to happen in the next number of months, waving the legal agreement is not enough. So, how do

we deal with that? It is a very difficult issue to answer.

My third question relates to my old hobbyhorse, and I ask it because of the connectivity of my constituency. I said in the last Brexit debate we had that the first real test of our preparedness will be our ability to export after 1 January 2021. I have had long discussions with the Department of Transport and its officials on this matter, and I have been told that they have assurances from the current providers that it will be all right on the night. I have repeatedly asked for the data and the analysis, because 40% of our exports go through a land bridge, as the Minister knows. If there is a disruption at the Port of Dover, it will be very significant for us. I have two real concerns. One is that we do not have enough direct connectivity, and I know that some people are working on that. However, there are funds, like the connectivity fund, which was established within the Ireland Strategic Investment Fund after the sale of the Aer Lingus shares, that was precisely designated to be used for connectivity. Why is it not being used to ensure that we have more direct routes?

My second concern relates to encouraging other operators. I know Rosslare very well, obviously, and there is basically a duopoly there with Stenaline and Irish Ferries. They sail twice a week on the same day, and it is a very nice, cosy arrangement. It does not necessarily suit all exports. They run that nicely and have done so for years. I do not think it is the proper approach to ask them if it will be all right, and if they can ratchet up their operations. I am not saying that it is all that is being done, but we do need to have a clear understanding that we will not fail the test on 1 January 2021.

My fourth and final question relates to the presentation made by Maros Sefcovic to the European Parliament. I would appreciate the Minister's take on the presentation, because I took it as being downbeat and that he was basically saying we are running out of time. To get an agreement, we need the space beyond the agreement for ratification, through both the European Parliament and the member states, and also the British Parliament. Timelines are very tight. In terms of the do-ability of this, I would be interested in hearing the Minister's point of view.

**Chairman:** I thank the Deputy. I call on Senator McDowell.

**Senator Michael McDowell:** I welcome the Minister. I have a number of issues that I wish to raise. First, in relation to level playing pitch-state aids, the Minister has elaborated at length on the broad issues involved. In terms of the negotiations, and this new phrase that is creeping into negotiations, "landing zones", which refers to areas where a potential agreement could arise. My understanding is that the UK position is that it cannot accept that the final decision rests with EU institutions, such as the Court of Justice of the European Union, and the extension of EU sovereignty into its own domestic affairs. The Minister has spoken about governance of the whole area of the regulation and scrutiny of state aid. I know that I cannot prise open negotiation positions too much in public, but is anyone talking about some form of tribunal resolution mechanism, which would be binding both on the EU and on the UK to determine whether or not a state aid is permissible? Is that the landing zone we are talking about? Maybe the Minister will answer that.

The second point I wish to raise is with the Minister in his capacity as Minister with responsibility for trade. As I understand it, the Tory Party is advancing, maybe as a great cure for virtually everything that is problematic in the UK economy, this notion of regional free ports. What is the Minister's analysis of what is being proposed? Are these to be zones, like the former Shannon arrangement in Ireland? How would they interact, if, for instance, there was a free port in Northern Ireland? How would it interact with the free movement of goods if there

were tax-free areas and state aids and the like? I have not heard any Irish Minister comment on this issue yet.

The third point that I put to the Minister is more radical. When I was Minister for Justice, Equality and Law Reform, and president of the European Council of Justice and Home Affairs Ministers, one of the things that always struck me was that the British Establishment was far ahead of us in many respects, analysing EU issues, looking at them and how they would affect, for example, justice and home affairs matters. I went before a parliamentary committee in the House of Lords, which was examining our views on Schengen-related issues. It struck me that we are going to have a deficit if we are going to have to do all our thinking ourselves on all of these issues. We must raise our game significantly. One can have one view or another on the British, but they did a lot of thinking, preparation and analysis, which I do not see happening, at least in the open, in Ireland. Is the Minister's Department going to lead a kind of a "raise our game" campaign to engage all areas of Irish society in analysing what is being proposed in Europe, what the implications are for Ireland, and in studying proposals from Europe in the same way as British institutions and think-tanks used to do, and on which we partly relied?

As Minister for Foreign Affairs, the Minister has a diplomatic presence in Britain. Is it the Minister's understanding that there is opposition in the House of Lords to the Internal Market Bill? Is it the Minister's understanding that there is a significant likelihood that the repugnant clauses in that legislation will face amendment in the House of Lords, such as would make it impossible for that legislation to be in place before 31 December 2020?

**Deputy Simon Coveney:** There are fairly probing questions there. I will be able to answer most of them, but maybe not all of them, particularly in terms of the negotiating position on state aid. The committee will have to understand that I do not want to be hinting at any direction on which Michel Barnier needs to make choices.

I refer to the issue raised by Deputy Haughey, and the implementation of the Good Friday Agreement and the shared island unit. Different people at different times, during the Brexit process, have been accused of effectively misquoting the Good Friday Agreement and using as it as a negotiating tool. On both sides, accusations have been flying around that. From our perspective, we have been trying to protect the Good Friday Agreement and the progress the agreement has facilitated in terms of an all-island economy in particular. Multiple examples of North-South co-operation have been facilitated through the structures that have been in place under the Good Friday Agreement. I contend that all-island economic activity and trade have been real stabilisers and facilitators of new and better relationships between North and South, whether it is buying and selling cattle to each other or manufacturing facilities that are buying and selling to each other. Tens of thousands of vehicles cross the Border every day and the Border is no longer an impediment to anything. That is why the Border became such a totemic issue during these Brexit discussions and thrust Ireland into the spotlight. Solving that issue when part of this island will be outside the European Union, as part of the jurisdiction of the UK but effectively operating to EU rules for goods in terms of Single Market rules and regulations, is complex to implement and it has all sorts of knock-on consequences around perceptions and sovereignty. It has been very difficult for unionist and nationalist communities and, frankly, people in Northern Ireland who do not regard themselves as in either community to manage politically through this process. People have been forced into corners and it has been a difficult process. Much of it has been taking place in the absence of devolved institutions in Northern Ireland, which also is very much at the heart of the Good Friday Agreement.

I regret the tension, division and impact on relationships the Brexit process has had in

Northern Ireland because it has been damaging. In particular, I have a responsibility, as do others, to try to mend those relationships in the aftermath of this difficult negotiation where everybody has been asked to make compromises and so on. The implementation of the protocol prolongs many of those debates into a post-Brexit environment. In four years' time, there will be a vote on the continuation of that protocol. This is now a part of political discourse in Northern Ireland and will continue to be for many years to come. We have to try to find a way of ensuring that it works as well as it can for everybody so that we can focus again on the institutions of the Good Friday Agreement to ensure that relationships on the island are protected. That is what the shared island unit is about. It is not directly linked to Brexit but it is about trying to ensure that we can focus on what we can do together, in a positive sense and in a way that is not threatening to either community. It is about focusing instead on mutually beneficial co-operation in different areas and on elements of the Good Friday Agreement that perhaps have not been used as much as they could have and allowing the agreement to develop, as was envisaged, in facilitating all-island co-operation in multiple areas.

On the bilateral relationship that Deputy Howlin spoke about, we had many conversations with the previous British Government under Theresa May. I did a lot of work with David Lidington on that issue. In a post-Brexit environment we will not see British ministers very often unless we make a point of doing so. We will not see them in European Council meetings. As such, in terms of the normal relationship that Ireland has with the UK, which has been facilitated by joint EU membership and very similar policy positions in most areas, and our working together on many projects linked to EU membership, all of that is gone. We certainly had agreement with the previous British Government and I know the Taoiseach has spoken to Prime Minister Johnson about this. We would like to put in place new formal structures that would allow intergovernmental engagement, not just at the level of the Prime Minister and Taoiseach, which is important, but also at a ministerial level, whether between ministers for justice, transport, climate, development aid or whatever. We would certainly like to see an annual intergovernmental conference between the two Governments across multiple policy areas. By doing that, the Civil Service is required to work together in the build-up to that, probably in the three or four months in advance of that, preparing agendas and agreeing issues that can be put to Ministers for final agreement and so on.

If we look at the relationship between Portugal and Spain, for example, or to a certain extent, more recently, Germany and France, there are structures in place that require both preparation and engagement. That is the kind of structure we should have with the British Government on an east-west basis. We have of course Good Friday Agreement institutions that could be made to work more effectively. We made very good use of the British-Irish Intergovernmental Conference, for example, in the context of the memorandum of understanding that was signed between the British and Irish Governments to protect the common travel area, CTA, through Brexit. It was a very good example of using the British-Irish Intergovernmental Conference structure in a way that benefited east-west relationships. We also had to deal with issues that are relevant for the two Governments in the context of Northern Ireland.

The Deputy also asked what will happen in the case of a no-deal Brexit and what would be the domino effect if we do not get a trade deal. He asked what the consequences will be of the pressure that will put on the protocol if the British Government follows through on its legislation and does not implement the protocol in full, as it should be implemented. My viewpoint, which is based on a political reading of the position and is a view as opposed to a certainty, is that if the British Government were to decide effectively to renege on its obligations under the protocol in certain specific areas, which is the terminology that is being used, I do not see the

EU simply abandoning Ireland and saying that Ireland is no longer protecting the integrity of the Single Market and therefore has to make a choice between implementing a border on the island or a border will be *de facto* created between Ireland and the rest of the Single Market. That will not happen. What will happen is that the EU will require the UK to fulfil its obligations under international law. That will have a knock-on consequence for the relationship between the UK and the EU because from 1 January 2021, the UK needs EU facilitation in multiple areas, including data, services, financial services, haulage, aviation, judicial co-operation, security co-operation and so on. It is not as if everything else is sorted and it is only the Irish issue that is left outstanding.

In my view, if there is not a trade deal and the UK decides to breach international law by not implementing what it is required to implement under the protocol, that will create a new relationship - I believe quite a negative one - between the EU and the UK. In that circumstance, where Ireland is again squeezed in the context of the breakdown of agreements, I believe there will be extraordinary solidarity shown to Ireland and that we will get significant support and help from an EU perspective. All the focus will be on the British Government following through on its legal obligations and legal action, if necessary, to do that. If that situation unfolds, it will be a monumental failure of politics and diplomacy and cause self-harm for Britain in particular but also with implications that will impact on Ireland in a very negative way, as well as on many other countries in the EU. I do not believe it will come to that. I think the British Government would see the folly of that approach. That said, we have difficult issues to overcome to make sure it does not get there.

I knew the Deputy would raise the issue of direct connectivity in regard to Rosslare. He is right to do so. There are some 150,000 truck journeys each year using the UK landbridge. That is a lot of trucks and a lot of goods coming and going, and it is worth approximately €8 billion.

**Deputy Brendan Howlin:** It is €18 billion.

**Deputy Simon Coveney:** Either way, it is a lot of money. I will get the exact figure before the end of the meeting. In any event, approximately 85% of goods coming to and from the island of Ireland come via the sea and a huge proportion of that involves landbridge traffic.

**Deputy Brendan Howlin:** It is 40%.

**Deputy Simon Coveney:** I addressed this issue in the House last night. We are, and have been, looking at the options or alternatives if the landbridge does not function as it should, or as it does today, and how we get goods to and from the rest of the Single Market. It is important to give people reassurance as regards the capacity of direct ferry routes between Ireland and mainland Europe, if we want to call it that. In the past 12 months, new services have already been launched, including Cork to Zeebrugge, Dublin to Santander, Waterford to Rotterdam, Rosslare to Bilbao and Rosslare to Roscoff, and extra sailings are already planned between Rosslare and Cherbourg and Cork and Roscoff for 2021. Therefore, there is very significant capacity on this route already. Some of it is just coincidental in that ferry companies had plans to increase capacity and some of it is linked to Brexit. There is also a very clear indication from ferry companies that if the demand of exporters, importers and haulage companies is that they want more focus on direct routes, they will shift ferries from an Irish Sea route onto direct routes. We have a lot of capacity in terms of roll-on, roll-off and lo-lo capacity.

I will stand corrected if I am wrong on this but from my conversations with the Department of Transport, my understanding is that, at the moment, those routes are operating on average

at about 40% capacity, so there is significant extra capacity available if the demand decides to switch, which it has not done yet, by the way. Exporters, importers and haulage companies are still using the landbridge very extensively. However, if that capacity switches, they have the ability to respond to that.

I know there is a view, and I do not disagree with it, that having a daily service from Rosslare to a major French port would be a significant addition to that. I read in the media that there are ongoing discussions around providing that service, which would be great. The issue for the Government is whether we should intervene in terms of subsidising routes. While the Government has done some of that, we want to make sure that it does not bring more disruption than solution. If we have existing routes with significant extra capacity, subsidising new routes may well have more of a negative than a positive effect, and there is not a strong demand from shipping companies for extra subsidised routes right now. We have to be streetwise as well in terms of the different interests. We will continue to talk to shipping companies, to hauliers and to exporters.

I know the Minister for Transport, Deputy Eamon Ryan, is focusing on this and I am working with him to try to make sure we get this right before the end of the year. To be very clear, money is not the issue. If the right thing to do is to subsidise routes, that is what we will do. Supply chains are what are important, as well as opportunities for businesses. This is not about money. It is about trying to make sure we work with shipping companies, hauliers and exporters to get the direct ferry routes right in terms of capacity meeting demand. There are scheduling issues and ports of choice issues that are part of this discussion but I can assure the Deputy the Government will not be found wanting in terms of targeted intervention if that is what makes sense. At the moment, however, the view in the Department of Transport - having spoken with them, I agree with them - is that subsidising a route is not the appropriate thing to do for now. Nonetheless, it is an ongoing discussion.

On Maroš Šefcovic's presentation to the European Parliament, many people are downbeat in Brussels right now, and that is the truth of it. This has been left to the last minute, there are big obstacles to overcome and the British Government's approach in the last few weeks, particularly linked to the internal market Bill, has taken many people by surprise. It is not what people expect from Britain, frankly, so trust has been damaged. Many people have interpreted that as the UK not wanting a deal and that this was really about managing the communications of having no trade deal. I do not agree with that perspective, by the way, and I have been quite vocal on that in Brussels. There is some more optimism now than there was a few weeks ago, and I think the phone call between President von der Leyen and Prime Minister Johnson was helpful in terms of reinforcing the message that a deal can be done. I would reinforce that message again today.

On the figures, Deputy Howlin was factually correct in regard to exports. The volume is 3 million tonnes, with exports worth €18 billion and imports worth €3 billion, so they are big numbers.

On the issue of state aid, I might talk to Senator McDowell off the record but my speaking on the record about landing zones is probably not helpful to the process and may raise expectations in terms of certain areas, and I do not think I should do that. It is up to the negotiating teams to find a landing zone the EU can live with and that the UK can accept. However, there has to be some pretty comprehensive agreement around fair competition between the two economies if there is to be tariff free trade, and there has to be a governance structure that is trusted by both sides to be able to resolve disputes when they emerge.

I take the Senator's point in respect of the European Court of Justice and UK concerns around that, and what the Senator has pointed towards as a potential solution to that. I believe we should leave that to the negotiation teams. Michel Barnier has to operate to the pretty tight mandate he has been given. He does not have the flexibility, frankly, that the UK has, because the UK represents the interests of one state and Michel Barnier represents the interests of 27.

The point the Senator makes regarding Ireland gearing up to do a lot more on our own is a very valid one. The EU without the UK is a very different place for us. It is a weaker Union without the UK and we have lost a really influential partner in many policy areas. It is true that we would have leaned on British research and British know-how in lots of areas. Indeed, even in my own Department, there are many examples of us leaning on British diplomatic footprints in different parts of the world in terms of getting assistance and supports, and we have worked very closely with them in regard to repatriation of citizens during the Covid process. Having a neighbour with the global reach the UK has and the influence it had within the European Union will be badly missed by us. Take tax, for example. Our position on tax is well understood but the UK had a very similar position in terms of countries deciding on their own tax systems and tax rates. The same applies in many other areas. I note the irony of Britain now wanting to leave the customs union and Single Market when British thinking was perhaps more influential than that of any other country in ensuring that free and fair competition prevailed within the Single Market. In many ways the UK acted as a bulwark against protectionism and helped to deliver a functional Single Market. There are so many ironies in the direction Britain is deciding to move in. We will miss it.

We have very much been tied to British policy towards the operation of the Schengen area and we have helped to shape it. British think-tanks are often a part of Irish thinking on the EU. We are swimming on our own now. We have lost a very significant player, although in truth it has effectively been gone for some time, since the Brexit process started. We have focused on building relationships with other EU countries. These are becoming much closer partnerships. Our relationship with the Nordic and Baltic countries is much closer than before. They see the world very similarly to us on many issues. Our relationships with France and Germany have been significantly reinforced. My Department has produced policy for the development of French-Irish and German-Irish relationships. In the past 18 months we have done quite a lot of work and published many proposals. We have opened a new consulate in Frankfurt with a big focus on trade and financial services. We are pursuing several projects in France. That said, our relationship with Britain is not going to end. We need to ensure that. We will be opening a consulate in northern England next year. We have not finalised the choice of city yet. Those relationships with Britain need to remain very strong.

I need to be a little bit careful with what I say about the House of Lords. The indications are that many in the House of Lords have a real problem with this legislation, the approach being taken and what it means for Britain from a reputational perspective. I am a big admirer of Britain in many ways. There are certain things in the very complex history of Ireland's relationship with the UK which were tragic and should not have happened. That said, I see Britain as a country that upholds international law and stands up for its importance. I think Britain will regret the example it is setting with the United Kingdom Internal Market Bill 2019-21. I think there will be significant resistance to that approach in the House of Lords. There is a lot of legal expertise in the House of Lords which will delve into this in some detail. The issue is not just in the approach, but the legality. We will have to wait and see what happens in the House of Lords. I do not want to make any predictions, but I certainly think this legislation will have a rough ride through that House. That has consequences for the timeline of the passage of the legislation.

Far be it from me to predict how the British Houses of Parliament will do their business. For what it is worth, my view is that this is more about a negotiating strategy than the legislation itself. As I say, it has backfired to a certain extent but it is what it is. My focus and that of the EU side, certainly the negotiating teams, is less on the threat of legal action than on trying to resolve the issues in order to make the legislation irrelevant. That will enable us to focus on the real prize, securing a deal that will allow the future relationship to be a much more constructive one than it will otherwise be.

**Chairman:** I thank the Minister. A final round of members is offering to speak. Deputies Marian Harkin and John Brady have offered.

**Senator Lisa Chambers:** If it is permissible, I have a short non-Brexit question. I can raise it at the end.

**Chairman:** We will need ten or 15 minutes for business in private session, so we are very tight for time. I know the Deputy will indulge me by trying to be as specific and concise as possible. I will call Deputies Harkin and Brady and Senator Chambers.

**Deputy Marian Harkin:** There are several things I wanted to say which I will leave aside for now. I thank the Minister for giving us a very good overview. I will raise one or two very specific questions with him. The Minister spoke about what the protocols say about state aid and whether the EU's reach extends to parent companies in the UK if we do not have a trade deal. Could he explain how that will work in the absence of a trade deal? What do the protocols say specifically? I would also like to ask about the arrangements for determining what goods are at risk in the absence of a trade deal.

The Minister spoke about the readiness of companies here. I was glad to hear the percentages he quoted. What about the systems themselves, in the UK, Northern Ireland and here? Are they ready to go? My final comment follows from what Senator McDowell said about the British doing the heavy lifting for us in many areas. I could see that in the European Parliament, where we often had shared interests and a common understanding. We also had some very senior Irish officials in the Commission. That position is also changing. There has been a double blow there.

I am very happy to hear that the Government is pursuing new alliances. It is important to be extremely proactive there. It is also important that we set up some kind of system to examine the legislation more closely at home, not only when it is proposed but as it goes through the Houses and is amended. No matter what alliances we have, they will not make up for a depth of knowledge here.

**Deputy John Brady:** I thank the Minister for that very insightful overview. I unfortunately missed the first part of it. Hopefully, I will not repeat questions and points that have been made by other members. The Minister's openness and frankness have been very useful. One of his contributions used the word "reckless" to describe the British Government's approach and strategy. That is a view that most if not all of us here would share. The Minister also said that the British approach has backfired. Again, I concur. That is attested to by the formal notice issued by the European Union last week. Unfortunately, I do not think the British have got that message. Brandon Lewis, MP, announced last week that the UK Government intends to move forward with a second piece of legislation as part of a finance Bill. Unfortunately this shows that they clearly have not got that message. What are the Minister's views on that approach and its potential outcomes? I know he briefly touched on British intentions to introduce a finance Bill.

It was concerning when Brandon Lewis, MP, stood up in the House of Commons last week and announced his Government intends to move ahead with it.

The Minister touched on some of the key issues and areas where there is division. These include fishing, which is of no surprise to members here. Worryingly, the Minister stated that positions have hardened on both sides and he might elaborate on that point a little. As the Minister said, there will be no future trade agreement without a deal on fishing. I would like to get the Minister's views on what he means when he says that positions have hardened on both sides.

I am not sure if the Minister touched on the EU Brexit fund because the Minister of State, Deputy Byrne, previously had stated that we would be top of the list when it comes to accessing the €5 billion Brexit adjustment fund and moneys within that. We know proposals had to be brought to the Commission before November. Can the Minister tell us whether the view is still that we will be top of the list for accessing large chunks of that funding? What engagement has taken place with the Commission to examine areas where that funding could be useful?

We have our budget next week and the Minister and other Ministers have been on the record as stating that it will be a no-deal Brexit budget that will involve planning for the worst while hoping for the best. I do not know whether the Minister wants to give us an exclusive here on what may be contained in the budget for Brexit preparedness but there are concerns that the contingency measures within the budget will not be enough to deal with a no-deal Brexit. The Minister might touch on that point. The Minister mentioned the land bridge and we had a useful engagement in the Chamber last night on that issue. The Minister touched on it here again when he said that money is not an issue and that where the Irish Government needs to step up to the plate, it will do so. The Minister also mentioned the issue of the potential for state aid and he highlighted the issue of roll-on roll-off. What measures are contained within the budget for contingency funds around issues such as that? If that scenario develops, the Minister says there is capacity within our ferries and so on to deal with our exports but we know the serious potential that is there and what may happen. Worst-case scenarios have been touted of 7,000 trucks parked along the M20. If that happens, many of those trucks will have to resort to using our ports. We need to be able to respond very quickly to that. The Minister said finance or money will not be an issue so he might touch on that matter in his response as well. I will leave it at that for now.

**Senator Lisa Chambers:** Could the Minister update us on the common EU travel restrictions? Is there movement on that? When might the Department be looking beyond the European Union to the likes of Canada and Australia where many Irish people are living? As that includes two members of my immediate family, this is of particular interest to me as I would like to know when we might be able to visit or when they might get home to us.

**Deputy Simon Coveney:** I refer to Deputy Harkin's question of what the knock-on consequences will be if we do not get a deal in terms of state aid and the risk issue. If one reads the level playing field text on the political declaration, which signalled where we were going with this, it states:

These commitments should prevent distortions of trade and unfair competitive advantages. To that end, the Parties should uphold the common high standards applicable in the Union and the United Kingdom at the end of the transition period in the areas of state aid, competition, social and employment standards [and so on]

It also states "The Parties should in particular maintain a robust and comprehensive frame-

work for competition and state aid control that prevents undue distortion of trade and competition". The wording in the protocol itself talks about that requirement applying to the UK in the context of trade distortion in Northern Ireland.

I do not have that exact wording to hand but the understanding of that is not in dispute. What is in dispute is the British Government has said it cannot live with a situation where a protocol that applies to Northern Ireland extends into limiting what it can do on state aid in Great Britain. That is a concern we have to overcome in the context of ending up with no trade deal because the protocol will have to be implemented anyway. We cannot have trade distortion in Northern Ireland because there is no mechanism to remedy a trade distortion as there is no border. If state aid is applied to a company in the UK that derives a competitive advantage beyond what the EU would allow on state aid in Northern Ireland, that creates an extended trade distortion within Northern Ireland in the context of an all-island economy. That is effectively the nub of the issue.

That is why I say that if we get a trade deal that deals with the matter of state aid, that becomes a non-issue. If we do not, then what the UK has signalled in its Internal Market Bill is effectively that if it does not get what it wants, then the power will be given to a British Minister to do it anyway. A British Minister will make the judgement around that state aid calculation and on Britain's responsibilities under the protocol. That, of course, is not the way the protocol is supposed to work. It is supposed to be agreed by both sides. In Northern Ireland, however, all of the obligations of the protocol are the responsibilities of British authorities, not EU bodies. That is why if Britain passes domestic legislation and gives that power to a British Minister, there is little the EU can do about that, apart from issue proceedings on the basis of a breach of the protocol and of international law.

This is an issue that has to be resolved through negotiation and threatening to do it through domestic legislation in the absence of an agreed outcome is not helpful. The EU has made it clear that the Internal Market Bill is not going to be allowed to be used as negotiating currency with the EU negotiators. In other words, no concession will be given for the UK agreeing to withdraw elements of the Internal Market Bill. That is essentially creating a crisis to allow that crisis to solve the problem one would have. That is not the way this negotiation will be finalised. We have to deal with the issue itself and try to accommodate genuine British concerns, which is what I expect and hope the EU negotiators will try to do.

The same goes for the goods at risk issue. Being able to accurately and consistently differentiate between goods that we expect and know will stay in Northern Ireland versus goods that we expect and know are at risk of crossing the Border and entering the Single Market is essentially what we are trying to do there. I could go into the complexity of that in terms of there being a tariff differential on certain products travelling both ways but I am not sure that would be helpful. The application of WTO tariffs from the EU and the UK might be slightly different on certain products. The core issue is the question of what is at risk of leaking into the Single Market because of the absence of border infrastructure on the island. Therefore, are there goods that are consistently being supplied into Northern Ireland for Northern Ireland consumers only and how can we ensure that there is a list that avoids tariffs being paid on those products? That is not an unreasonable request and we need to try to facilitate that for traders and importers in Northern Ireland for product coming from Great Britain.

I refer to the issue of EU legislation. The Deputy is right. We need to think constantly, particularly in this committee, about how we can assess EU regulations, directives, legislation and policy changes in a comprehensive way. Some people see this as tedious and boring technical

stuff, but it actually has a huge impact. A large part of the legislation we pass through the Dáil and Seanad relates to commitments we have made on an EU level or enshrining EU law into Irish law. We have to find a way of making what is going on more interesting for the public, because otherwise the work we do will be cocooned into a space where people who are knowledgeable about EU rules and regulations talk to each other but it does not really break out into more general public consideration. Obviously Brexit is an exception to that.

As regards Deputy Brady's point, I have been critical of the UK Government's approach with the Internal Market Bill but the UK has very legitimate concerns about Brexit, about which it has a right to negotiate robustly in these negotiations. Let us be clear on that. This is a very large country, in EU terms, and a very significant economy. It is making a huge decision to leave the European Union and is trying to make the best of that. It will try to drive a hard bargain in these negotiations. That is no secret and we should not be taking offence at that. We are equally robust in protecting our interests through these negotiations. Where I felt the British Government behaved disappointingly, to put it mildly, was in introducing the Internal Market Bill, which effectively undermined elements of an agreement that was settled a year ago and has created an unnecessary amount of tension and division, especially in Northern Ireland, linked to that approach.

I could speak about fishing for half an hour or longer, but I will not. The mandate Michel Barnier has to protect the existing access and quota share that the EU fleet has in British waters and shared stock is a very tight one. The UK, politically, has promised its fishing industry a very significant Brexit dividend in terms of extra fishing opportunities and significant increases in the amount of fish its fleets will be able to catch in British waters. That creates a very difficult negotiation and a landing zone that is, frankly, quite hard to envisage for now. The negotiators have a difficult job here. Yesterday, Michel Barnier spoke to eight different fisheries ministers to try to get a sense of their views on the issue. This is a big obstacle and I do not think the British Government should underestimate the strength of feeling on fishing from many of the Atlantic member states, such as Spain, Portugal, France, Ireland, the Netherlands, Belgium, Germany and Denmark. That is quite a group of countries which have significant interests in shared stocks.

These are not British fish or EU fish. They are fish that swim between the two jurisdictions, so to draw a line down the sea and say the fish on one side are ours and the fish on the other are the UK's is a ridiculously simplistic way of looking at this. Mackerel, which is in monetary terms our most valuable stock, is a very good example of that. Most of the fish caught in Scottish waters by Irish, Scottish and British fishing boats are mackerel that spawned off Galway, grew into juveniles off the coast of Mayo and Donegal and then swam into British or Scottish waters at the right fat level and size to be caught and to maximise their value and have as sustainable a fishery as we can. If we are going to manage that stock properly, we have to understand that nobody owns this stock. This is a transitory species of fish that moves between our territories and that is why we must manage this stock in a way that is sustainable for everybody. For the stock itself, it makes no sense at all to have a position on quotas that potentially incentivises catching them as juveniles or before they should be caught because they are in one jurisdiction and not the other.

**Deputy Brendan Howlin:** I am sorry to interrupt. Are we allowed be in this room for much longer?

**Chairman:** I ask the Minister to wrap up. The committee will then go into private session for a few minutes.

**Deputy Simon Coveney:** To conclude on fishing, my job and that of the Government is to protect Irish fishing interests and the stocks on which we all rely. We will do everything we can to do that and I have already had quite a long conversation with Michel Barnier about it. The Minister for Agriculture, Food and the Marine, Deputy McConalogue, also spoke to Michel Barnier yesterday and I think our views are well understood.

As regards the adjustment fund, it is €5 billion, but while Ireland is top of the list as the country most affected by Brexit, when one starts to slice that up into the different sectors that are potentially vulnerable and the countries impacted, it is a limited amount of money. Many countries and sectors will be looking to access it so we need to be realistic about that while also being ambitious and quite demanding. I have met Commissioner Hahn, who is in charge of budgets, on this issue and we have had some good engagement on it. That has been followed up now at the level of senior officials.

Senator Chambers asked about her cousins in Canada.

**Senator Lisa Chambers:** They are my sisters, actually.

**Deputy Simon Coveney:** Sorry, her sisters. I also have family in Canada. I am likely to be in Luxembourg at the General Affairs Council meeting next Tuesday, which also happens to be budget day, because it is an important meeting about Brexit but also about international travel. We may or may not be able to get an agreement across the EU on a Commission proposal for a much more collective approach to international travel, the setting of thresholds, and a traffic light system whereby countries are in a green, amber or red state. Restrictions would be linked to that traffic light system and we would take a more joint approach to quarantine, restricted movement and so on. It would be very helpful from an Irish perspective if we had the certainty of an EU approach that was being applied by everybody. Some elements of the application of certain restrictions will undoubtedly be country-specific and linked to public health advice available to individual governments. It is to be hoped that much more can be agreed collectively to give certainty to people who want or need to travel, as well as to our airline industry, airports and so on, in order that they can plan for the future. I do not want to overpromise in that area, but the Government has decided to move towards ensuring Ireland is consistent with a collective EU approach. There are issues around testing options in airports, for example, which are quite technical, and around ensuring the decisions we make are consistent with public health advice. Work is ongoing on those issues this week. I do not know whether we will reach an agreement at the General Affairs Council next week, but we are certainly attempting to do so, and it would be very helpful from an Irish perspective. That debate is quite current and we might see quite a lot of movement on it in the next week to ten days.

**Chairman:** I do not have time to wrap up but I thank the Minister, Mr. Gardner, and all the officials for all their work.

The joint committee went into private session at 10.58 a.m. and adjourned at 11.01 a.m. until 9 a.m. on Wednesday, 14 October 2020.